BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 50-275-LR
PACIFIC GAS & ELECTRIC COMPANY	)	50-323-LR
	)	
(Diablo Canyon Power Plant)	)	November 12, 2014

(License Renewal Application)

FRIENDS OF THE EARTH'S REPLY TO NRC STAFF'S AND PACIFIC GAS & ELECTRIC COMPANY'S ANSWERS TO PETITION TO INTERVENE AND REQUEST FOR HEARING

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I. INTRODUCTION

Answers from the Pacific Gas & Electric Company ("PG&E")[1] and the Nuclear Regulatory Commission Staff ("NRC Staff")[2] to Friends of the Earth's Request for a Hearing and Petition to Intervene[3] ("Petition") ignore the central issue raised by the Petition—that, in the face of the latest in a long line of startling new reports showing that PG&E has underestimated the seismic risk to the Diablo Canyon Power Plant ("Diablo Canyon"), PG&E's license renewal application does not establish that the plant can remain safe during the period of extended operation requested by the licensee.

At the outset, it is worth noting that the contentions submitted by Friends of the Earth ("FoE" or "Petitioner") need only satisfy the NRC's standard for admissibility. PG&E and NRC Staff at times ignore the NRC regulations and caselaw that require a petition to set forth the legal and factual *foundation* for its contentions, not prove the case.[4] For the reasons that follow, Petitioner respectfully contends that it has met the NRC's standard. Through its contentions, Petitioner argues—and, if given the chance at a hearing, will prove—that PG&E has successfully engaged in a series of actions designed to downplay and conceal the serious seismic risk to the plant.

The history of Diablo Canyon bears out this point. Despite a succession of discoveries showing that the capability of a number of faults around the plant is greater than PG&E previously thought, PG&E continues to maintain that the projected ground motion at the plant is "bounded" by the initial 1977 Hosgri Evaluation and the 1991 Long Term Seismic Plan ground

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[1] "Pacific Gas & Electric Company's Answer Opposing The Friends of the Earth Hearing Request and Petition For Waiver," dated November 4, 2014 ("PG&E Answer").
[2] "NRC Staff's Answer to Friends of the Earth's Request For a Hearing and Petition to Intervene and Waiver Petition," dated November 4, 2014 ("NRC Staff Answer").
[3] "Friends of the Earth's Request for Hearing and Petition to Intervene," dated October 10, 2014 ("Petition").
[4] *See infra*, section II.c.

motion response spectra. In each case, PG&E has adjusted key assumptions that determine the degree to which an earthquake shock is moderated as it travels to Diablo Canyon, in order to obtain the desired result. PG&E has modified the energy attenuation assumptions and methodologies (e.g., damping values and rock velocity factors) until the new maximum projected ground motion resulted in a spectrum that appeared to be bounded by the 1977 and 1991 ground motion response spectra. After the September 2014 Seismic Report, demonstrating that a number of PG&E's conclusions regarding surrounding faults were inadequate, PG&E once again asserted, without objection from the NRC Staff, that even though a magnitude 7.3 earthquake is capable of occurring *0.6 kilometers from the plant* from a joint rupture on the Hosgri-San Simeon and Shoreline faults, the ground motion response spectrum from such an event is somehow still bounded by the 1977 and 1991 spectra.[5] Petitioner contends that the information in the Seismic Report shows otherwise and that the issue should be fully aired in a public adjudicatory hearing before this Board prior to a decision on whether to grant the license renewal application.

II. THE NEW INFORMATION PRESENTED IN PG&E'S SEISMIC REPORT CANNOT BE BOUNDED BY THE GROUND MOTION PREDICTED FOR A HOSGRI EVENT

The licensee's application to renew the operating license for Diablo Canyon should not be granted until there is a public adjudicatory hearing demonstrating that it can be safely shutdown in the event of a magnitude 7.3 earthquake 0.6 kilometers from the plant during the period of extended operation. PG&E's claim that such an event will produce no greater ground motion than projected by the 1977 Hosgri and 1991 LTSP ground motion response spectra is untenable. Before the license for Diablo Canyon is renewed for another 20 years, the Board should assure itself and the public that despite the new seismic information, and PG&E's new

[5] PG&E Answer at 7, 8, 9, 16, 22; NRC Staff Answer at 8, 20, 22, 37.

method – not publicly or peer reviewed, and unapproved by the NRC – for interpreting that data, Diablo Canyon can continue to operate during the renewal period with an adequate margin of safety.

a. New Information Presenting A Significant And Material Safety Concern Exists

PG&E and the Staff errantly assert that the updated ground motion potential based on the new seismic information is "bounded" by the 1977 Hosgri and 1991 LTSP ground motion response spectra and, as a result, that the new information about the size and capability of the faults near Diablo Canyon is not new or material to the license renewal application.[6] Quite the opposite is true; as detailed in FoE's Petition, the 2014 Seismic Report provides evidence that PG&E has chronically underestimated the seismic risk at Diablo Canyon. This information is material to the question of whether PG&E's license ought to be extended for an additional 20 years.

The assurances made in the license renewal application are premised on the assumption that the maximum ground motion potential at the plant following the maximum earthquake possible is 0.75g. PG&E's Seismic Report shows that these assumptions are no longer valid. First, PG&E admits, as detailed in FoE's Petition, that three major faults near the plant are much more capable than previously known. NRC Staff and PG&E admit that these startling conclusions constitute new information.[7] In addition, the Seismic Report shows that the configuration of the more capable fault system threatens a larger earthquake just 0.6 kilometers from Diablo Canyon's intake structure.

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[6] NRC Staff Answer at 19-20; PG&E Answer at 22, 24.
[7] *See id*.

Second, this new information is material to the license renewal proceeding. As a simple matter of logic, PG&E's discovery that the Hosgri-San Simeon, Shoreline, and other faults can deliver more seismic energy closer to Diablo Canyon than previously thought and accounted for necessarily means that the ground motion potential at the plant must also be greater than that previously calculated. FoE's expert, Dr. Gerhard Jentzsch, calculates that the ground motion potential at Diablo Canyon from a magnitude 6.8 earthquake occurring as far as 10 kilometers from the plant as a result of a joint rupture of the reanalyzed Hosgri-San Simeon and Shoreline faults could be as high at 1.24g, far greater than the ground motion at the plant predicted from either the DDE (0.4g) or the HE (0.75g).[8] PG&E and the NRC Staff should be made to demonstrate in an adjudicatory hearing how it could be that the ground motion from a magnitude 7.3 earthquake just 0.6 kilometers from the plant, a quake larger and substantially closer to the plant than Dr. Jentzsch's example, would somehow not cause greater ground motion than that calculated for the Hosgri, when the Hosgri Fault is located more than seven times further away from Diablo Canyon than the Shoreline Fault. The potential for *at least* a 65% increase in the greatest ground shaking possible at Diablo Canyon[9] is certainly material to whether the plant should continue to be licensed to operate for an additional 20 years.

b. As New Faults Have Been Discovered And The Capabilities Of Known Faults Have Been Revised Upward, PG&E Has Repeatedly Modified The Ground Motion Prediction Equations Used To Arrive At The Maximum Ground Motion Potential At The Plant In Ways That Reduce The Margin Of Safety At Diablo Canyon

PG&E's assertion that the Hosgri and LTSP ground motion response spectra "bound" the possible ground motion from the reanalyzed faults is based upon ever-shifting equations used to predict the ground motion potential at the plant. The history of PG&E's changing set of ground

[8] Petition at 15.
[9] *Id*.

motion prediction equations shows that as new information was discovered indicating that seismic energy in nearby faults was greater than previously thought, PG&E has changed its ground motion prediction equations so that the newer ground motion response spectra appear to be bounded by previous analyses:

- The 1991 LTSP spectrum used an equation derived from a database of strong-motion recordings of earthquakes at a range of distances with regression analysis.
- After discovery of the Shoreline fault in 2008, PG&E used a different set of ground motion prediction equations, called Next Generation Attenuation (NGA) models, which averaged the shaking measured by about 3,600 earthquake recordings contained in the Pacific Earthquake Engineering Research Center (PEER) database. However, only 8 of the 3,600 recordings were within 0.6 kilometers of the fault. Such a small sample cannot yield a statistically robust estimate of the shaking associated with such near-field seismic event. Thus, the result of the NGA exercise was to provide an unreliable estimate of lower ground motion than would have been produced using the methodologies of the 1991 LTSP ground motion spectrum, even though the Shoreline fault is known to be nearly as capable and located only 0.6 kilometers of the plant.
- In 2009, the NRC Staff performed its own calculation using the 2008 NGA model and found the ground motions predicted from a rupture on the Shoreline fault to be very close to or only slightly below the LTSP/HE ground motion response spectra.
- In the 2011 Shoreline Fault Zone report, PG&E used the NGA model, with some adjustments, to estimate the ground shaking potential at Diablo Canyon. The

most significant adjustment was a new hard-rock de-amplification equation. PG&E used a rock velocity factor, the speed at which seismic energy would move through rock, that was faster than the factor used in previous calculations[10] and unrelated to the actual rock type found under Diablo Canyon. The resulting ground motion potential was significantly lower than that predicted by the NGA model, so much so that predicted ground motion was now significantly below the Hosgri and LTSP response spectra. Thus by changing the assumptions on de-amplification PG&E invented a wider safety margin.

- In the September 2014 Seismic Report, PG&E stated that it is still developing another ground motion prediction equation that will be used to support its assertion that the 1977 Hosgri and 1991 LTSP spectra continue to "bound" the ground motion potential at the plant. PG&E states in the Seismic Report that "the ground motions shown in this section [chapter 13] are for an initial hazard sensitivity evaluation only."[11] It is apparent from the Seismic Report that there are three fundamental ways in which this new set of equations reduces the predicted shaking at Diablo Canyon.
  - First, PG&E uses the NGA model, which derives predictions for shaking from 3,600 recorded instances, only 8 of which occurred within 0.6 kilometers of the fault.
  - Second, PG&E included the hard-rock de-amplification factors not designed for application to the kind of rock found below Diablo Canyon.

[10] Faster moving energy (e.g. a rock velocity of 1,200 m/s instead of 800 m/s) results in less ground shaking.
[11] Seismic Report at 20.

– Third, PG&E introduced a new single-site factor, which, based on the limited near-field recordings available, is insufficient to predict shaking in extreme near-field settings, such as the scenario presented by an earthquake on the Shoreline fault 0.6 kilometers from Diablo Canyon. Extreme near-field seismic activity has a much different effect on ground motion potential than does activity further away (e.g. 10 kilometers). In the extreme near-field ground motion can be affected by a number of factors not considered (at least not to the same extent) in far-field scenarios, such as how the rupture starts and stops, where it stops and in which direction it propagates, and the potential focusing effect of the velocity structure of the fault zone. For example, strong-motion recordings within 10 kilometers of the San Andreas Fault during the 2004 magnitude 6.0 Parkfield earthquake showed significant uncertainty in the ground motion effects in the extreme near-field.[12] Preliminary analyses showed peak ground acceleration ranging from 0.13g to more than 2.5g along the rupture zone.[13]

Given that the ground motion prediction equations appear to be ever-changing, PG&E cannot possibly demonstrate at this time that the newly understood seismic situation is "bounded" by the 1977 Hosgri or 1991 LTSP response spectra that were determined using different equations.

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[12] *See* Shakal, et al*., Preliminary Analysis of Strong-Motion Recordings from 28 September 2004 Parkfield, California Earthquake* at Figure 3 (2004).
[13] *Id*.

c. Petitioner Is Not Required To Prove The Merits Of Its Contention In Order For The Contention To Be Admissible

In their Answers, PG&E and the NRC Staff repeatedly question whether Petitioner has provided sufficient support to prove its contentions.[14] Their claims are themselves without factual support. But equally important, these arguments misconstrue the Commission's standard for admissibility of a contention. The standard "does not call upon the intervenor to make its case at [the contention] stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention."[15] Nor does the standard require anything beyond a showing of "some minimal factual and legal foundation in support of [petitioner's] contentions."[16] "The requirement generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons."[17] In addition, a contention of "omission" that focuses on the absence of a required analysis in the application is admissible and will not be deemed speculative because of any lack of detail regarding the potential content of the missing information.[18] Indeed, "[a] contention may be plausible enough to meet the admission standards even if it is ultimately denied on the merits."[19]

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[14] *E.g.*, NRC Staff Answer at 28, 36, 38; PG&E Answer at 15-16, 18, 22.
[15] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006) (internal quotation marks omitted); *see also* 10 C.F.R. § 2.309(f)(1), (2).
[16] *Id.* at 352.
[17] *Id.* (internal quotation marks and footnotes omitted).
[18] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43, 86, n.194 (2008).
[19] *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 160 (2006), *rev'd in part*, CLI-07-16, 65 NRC 371 (2007).

Contrary to PG&E's and NRC Staff's arguments, nowhere does 10 C.F.R. § 2.309(f) or the caselaw interpreting that regulation require Petitioner to prove the merits of its contention at this stage. Indeed, such a requirement would render nugatory a hearing on any contention. Petitioner has clearly satisfied the requirement to show "some minimal factual and legal foundation"[20] warranting admission of its contentions.

III. PG&E'S AND NRC STAFF'S ARGUMENTS THAT PETITIONER IS NOT ENTITLED TO A WAIVER ARE WITHOUT MERIT

Under the unique circumstances of Diablo Canyon, Petitioner has established that a limited waiver from NRC regulations is appropriate to permit Petitioner to raise significant issues bearing on the public health and safety. Diablo Canyon is unlike any other nuclear power plant in the United States with regard to the seismic hazards associated with the plant and the regulatory history surrounding these hazards. No nuclear power plant licensee, after completing its initial seismic hazard analysis, has ever had to go back to NRC to ask to amend its analysis in order to take into account newly discovered information indicating that the seismic hazard posed greater risk to the plant than previously thought; PG&E has done this *twice*—after the discovery of the Hosgri fault during the plant's construction and through filing License Amendment Request 11-05 to incorporate the Hosgri Evaluation into the plant's seismic design basis. NRC Staff's and PG&E's arguments that a waiver should not be granted are misguided, circular, and without merit.[21]

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[20] *Pilgrim Nuclear Power Station*, 64 NRC at 352.

[21] PG&E asserts in its Answer that FoE, by seeking a waiver, has somehow conceded that its contentions are not within the scope of a license renewal proceeding. PG&E Answer at 1. For the reasons stated in its Petition, FoE contends that its contentions are each within the scope of a license renewal proceeding and should be admitted. In the event the Board disagrees, Petitioner sought a waiver from applicable regulations.

a. Factor 1: Strict Application of the License Renewal Rule To Exclude Petitioner's Contentions Would Be Contrary To The Rule's Stated Purpose

The objective of the license renewal rule is to ensure continued safety during the extended period of the license term. The rule itself confirms this: "The final rule is intended to ensure that important systems, structures, and components will continue to perform their intended function in the period of extended operation."[22] PG&E, however, contends that the objective of the rule is not safety-related, but efficiency-related. In PG&E's characterization, the rule's purpose is to "avoid[] duplication of ongoing oversight efforts and ensur[e] that issues related to the CLB (and unrelated to aging management) do not become the focus of the agency's license renewal review."[23] PG&E thus appears to take an extraordinarily limited view of the responsibilities of the NRC Staff. In PG&E's words, NRC's primary concern in license renewal is not safety, but rather to avoid creating extra work for itself during the license renewal process.

As the text of the rule itself makes clear, the paramount objective of the rule is to ensure continued plant safety during the extended term of operation. The 1995 revision to Part 54 was intended to maintain its safety-related objective while serving the subsidiary purpose of avoiding duplication of ongoing oversight programs. Crediting PG&E's argument, thus placing the rule's efficiency-related objective above the rule's safety-related objective, would not only result in a frightening abdication of the NRC Staff's duties, but would lead to absurd results. Indeed, PG&E's argument that efficiency was NRC's primary concern in issuing the rule begs the question of why a review is necessary at all.

With the rule's safety-related objective in mind, precluding discussion in the license renewal proceeding of whether the plant's SSCs are unable to continue performing their intended function during the period of extended operation would be contrary to the rule's objective. The

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[22] Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,463 (May 8, 1995).
[23] PG&E Answer at 26.

rule's requirement that the applicant submit an aging management review and evaluation of time-limited aging analyses as part of the license renewal application is an integral part of the rule's safety-related objective. In the particular case of Diablo Canyon, seismic safety issues are integral to the age-related safety inquiry directed for a license renewal under the Commission's regulations, 10 C.F.R. Part 54, whose purpose is "to ensure that important systems, structures, and components will continue to perform their intended function in the period of extended operation."[24] This language implies an examination of both the SSCs and the seismic hazard to which they will be exposed. Under normal circumstances, the license renewal inquiry can achieve this purpose by focusing only on the SSCs themselves, because it can be assumed that the environment surrounding the nuclear plant is not different, in terms of the effectiveness of the plant's SSCs, from what it was when the plant was licensed.

But Diablo Canyon is an exception to this rule: research on faulting in the vicinity of Diablo Canyon has revealed the potential for a larger earthquake, much closer to the plant, than was known when the plant was designed and built. Thus in the case of Diablo Canyon, the NRC must examine *both* the SSCs *and* the greater seismic risk to which they may be exposed in order to determine whether the SSCs "will continue to perform their intended function" during the extended licensing period. To further the interests of the rule, therefore, Petitioner should be permitted to advance arguments that those analyses are so deficient that they are unable to demonstrate continued safety during the extended period of operation.

b. Factors 2 and 3: Special Circumstances Unique To Diablo Canyon Exist That Were Not Considered In The Rulemaking Proceeding

Factors 2 and 3 require that a petitioner demonstrate special circumstances that (1) are unique to the facility rather than a large class of facilities and (2) were not considered in the

[24] 60 Fed. Reg. at 22,463.

rulemaking proceeding leading to the rule sought to be waived.[25] The uniqueness requirement reflects the Commission's position that generic challenges to a rule are properly addressed not through a waiver petition but instead through a petition for rulemaking.[26]

PG&E's argument on this point is a mishmash of irrelevant points and self-defeating argument.[27] PG&E first appears to concede that Petitioner has established special circumstances that were not considered in the rule:

> FOE argues that there are "special circumstances" due to the "seismic history of Diablo Canyon" and PG&E's Seismic Imaging Project Report. FOE argues that those circumstances "were not considered in the rulemaking proceeding leading to the rule." Of course they were not considered in that rulemaking. The seismic history of Diablo Canyon had nothing to do with license renewal and the Seismic Imaging Project Report did not exist at the time.[28]

To permit a party to raise concerns that were not at issue at the time of the rulemaking, in limited circumstances, is precisely the point of the second and third factors of the *Millstone* test. Nowhere does *Millstone* or Commission caselaw applying the test require that the special circumstances proffered by a waiver petition exist at the time of the rulemaking. Tellingly, PG&E cites no authority for this proposition.

Notwithstanding this point, PG&E then maintains that Petitioner has not advanced any special circumstances warranting a waiver: "The test is whether there are special circumstances that would result in the rule not serving its intended purpose. There are none."[29] In the very next

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[25] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005).
[26] *Exelon Generation Co.,* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 2011 WL 12503047, at *6 (Oct. 31, 2013).
[27] *See* PG&E Answer at 27-28.
[28] *Id.* at 27 (citation omitted).
[29] *Id*.

sentence, however, PG&E acknowledges that Petitioner has cited "unique" circumstances but dismisses them as "irrelevant."[30]

The point of these two *Millstone* factors, as is clear from caselaw, is to prevent a petitioner from seeking a waiver as a means to improperly bypass a rulemaking petition.[31] But no such threat is posed by granting a waiver in this instance. No other plant besides Diablo Canyon sits abreast a network of major seismic faults; no other plant was required as a condition of its operating license to develop and implement a long-term plan to study and manage seismic risk[32] (as made clear by the 2011 discovery of the Shoreline fault and the 2014 significant upward revisions of the capability of multiple faults, PG&E's implementation of this plan has been a dismal failure); no other plant's seismic design basis includes three postulated earthquakes, let alone a design basis approaching the complexity of that of Diablo Canyon;[33] and no other plant in the history of the NRC has had to apply to the Commission to amend its seismic design basis based on discovery of a new fault.[34] For these reasons, Petitioner respectfully contends that it has *prima facie* satisfied the second and third factors of the *Millstone* test.

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[30] *Id.* ("The fact that unique seismic issues related to Diablo Canyon were not considered in the license renewal rulemaking is irrelevant.").

[31] *See Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-11-35, 2011 WL 12473893, at *9 (Nov. 28, 2011).

[32] Diablo Canyon Nuclear Power Plant, Unit 1, Operating License, Condition 2.C(7), ADAMS Accession No. ML053140349.

[33] *See* NRC Staff Answer at 5 ("Diablo Canyon has a unique and complex seismic design and licensing basis."). PG&E itself was forced to submit a License Amendment Request in 2011 to clarify which earthquake was the plant's Safe Shutdown Earthquake. *See* PG&E, License Amendment Request 11-05, "Evaluation Process for New Seismic Information and Clarifying the Diablo Canyon Power Plant Safe Shutdown Earthquake," ADAMS Accession No. ML11312A166 (Oct. 20, 2011).

[34] According to an internal NRC document, at a meeting between NRC Staff and PG&E held before PG&E filed LAR 11-05,

> Mr. Kamal Manoly of the NRC staff noted that he believes this is a first of a kind request as he is not aware of any other instance where a licensee has requested to change its SSE. As such, Mr. Manoly stated that the amendment needed to describe where the methodologies and acceptance limits used in the evaluation of structures and components for

c. Factor 4: Waiver Is Necessary To Reach A Significant Safety Problem

PG&E and the NRC Staff contend that a waiver is not "necessary" to reach a significant safety problem because Petitioner can obtain the relief it requests through a petition under 10 C.F.R. § 2.206.[35] But under the NRC's own policies, the process that § 2.206 purports to afford is not available to Petitioner under these circumstances. According to the Commission's guidance on § 2.206 process, requests that raise either licensing matters or health and safety-related matters are excluded from the § 2.206 process, thereby precluding Petitioner from raising the safety-related licensing claims it advances here. The NRC, in Directive and Handbook 8.11, provides:

> It is the policy of the U.S. Nuclear Regulatory Commission to provide members of the public with the means to request that the Commission take enforcement-related action (i.e., to modify, suspend, or revoke a license, or for other appropriate enforcement-related action, *as distinguished from actions such as licensing or rulemaking*). This policy is codified at [10 C.F.R. § 2.206]. The Commission may grant a request for action, in whole or in part, take other action that satisfies the concerns raised by the requester, or deny the request. *Requests that raise health and safety and other concerns without requesting enforcement-related action will be reviewed by means other than the 10 CFR 2.206 process*.[36]

The NRC's policy is clear that, for the agency to consider a request to be a petition under § 2.206, the request must meet *each* of three criteria, the first of which requires that "[t]he petition contains a request for enforcement–related action such as issuing an order modifying, suspending, or revoking a license, issuing a notice of violation, with or without a proposed civil

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> the HE are deviating from the applicable provisions in the Standard Review Plan (SRP).

NRC, "Summary of June 20, 2011, Pre-Licensing Meeting with Pacific Gas and Electric Company on Proposed License Amendment for a New Seismic and Design Evaluation Process (TAC Nos. ME5033 and ME5034)," ADAMS Accession No. ML111920567, at 2.

[35] PG&E Answer at 25 n.73; NRC Staff Answer at 49.

[36] NRC Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," at 1, ADAMS Accession No. ML041770328 (Oct. 25, 2000) (emphases added).

penalty, etc."[37] Here, Petitioner does not request any of the relief enumerated in the criteria in the agency's § 2.206 Directive and Handbook, and Petitioner's Petition to Intervene and Request For a Hearing cannot be considered under § 2.206. Moreover, the nature of Petitioner's contentions relate directly to plant safety *during the extended term of operation* and, therefore, may be brought only in the course of a license renewal proceeding. For these reasons, a petition under § 2.206 is not an alternative avenue by which Petitioner could request the relief it requests here.

NRC Staff contends that Petitioner could also obtain the relief it requests by submitting a petition for rulemaking under 10 C.F.R § 2.802.[38] But for the reasons explained above, the special circumstances particular to Diablo Canyon warrant a waiver rather than a general rulemaking. Petitioner seeks only a limited waiver permitting it to raise the significant seismic-related concerns relating to the plant's safety during the extended term of operation.

IV. CONCLUSION

For these reasons and the reasons stated in the Request for a Hearing and Petition to Intervene, Petitioner has established that its contentions are timely and admissible and that Petitioner has standing to bring these contentions. Petitioner respectfully requests its contentions be admitted.

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[37] NRC Handbook 8.11, "Review Process for 10 CFR 2.206 Petitions," at 11, ADAMS Accession No. ML041770328 (Oct. 25, 2000). The other two criteria are:

- The facts that constitute the bases for taking the particular action are specified. The petitioner must provide some element of support beyond the bare assertion. The supporting facts must be credible and sufficient to warrant further inquiry[; and]
- There is no NRC proceeding available in which the petitioner is or could be a part and through which the petitioner's concerns could be addressed. If there is a proceeding available, for example, if a petitioner raises an issue that he or she has raised or could raise in an ongoing licensing proceeding, the staff will inform the petitioner of the ongoing proceeding and will not treat the request under 10 CFR 2.206.

Id.

[38] NRC Staff Answer at 49.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the "Friends Of The Earth's Reply To NRC Staff's And Pacific Gas & Electric Company's Answers To Petition To Intervene And Request For Hearing" was served via the Electronic Information Exchange system.

Signed (electronically) by Jessica Olson
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Executed in accordance with 10 C.F.R. § 2.304(d)